SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 815

THE UNITED STATES OF AMERICA, APPELLANT

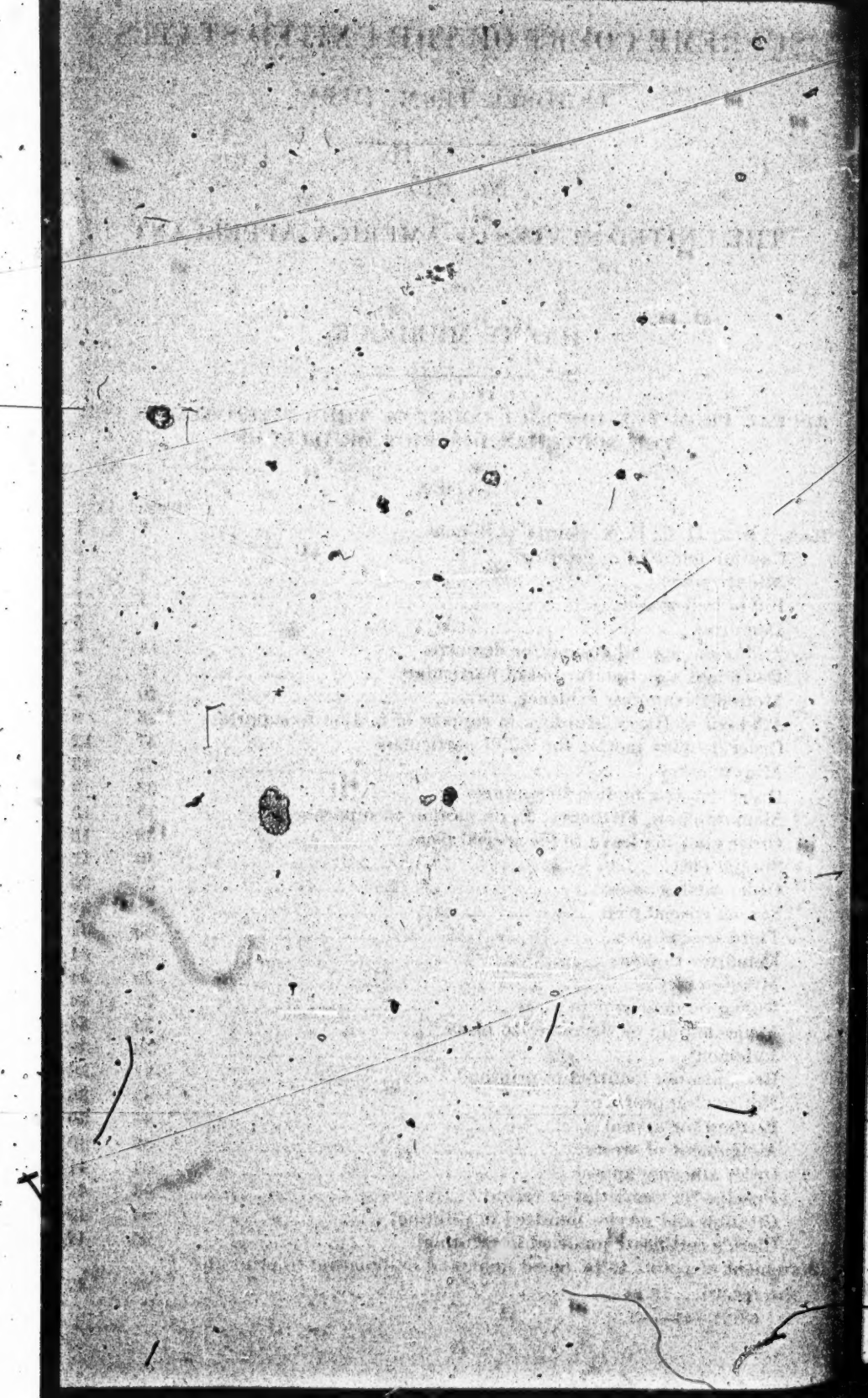
vs.

HARRY MURDOCK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

INDEX

	Original	Print
Record from D. C. U. S., Southern Illinois	1	1
Caption [omitted in printing]	1	1
Minute entry	3	1
Bill of indictment	4	1
Demurrer	11	5
Additional special ground for demurrer	14	6
Defendant's motion for bill of particulars	18	7
Motion to suppress evidence, etc	20	7
Affidavit of Harry Murdock in support of motion to suppress	23	9
Order denying motion for bill of particulars	31	13
Minute entry	33	13
Order denying motion to suppress	33	13
Memorandum, Fitzhenry, J., on motion to suppress	35	13
Order granting leave to file special plea	38	15
Special plea	39	15
Order setting cause	47	20
Second special plea	48	20
Third special plea	49	21
Demurrer to pleas	50	21
Minute entry	70	34
Ruling on demurrer to pleas	71	34
Memorandum on demurrer to pleas	72	35
Judgment	79	39
Recognizance [omitted in printing]	81	39
Notice of appeal	83	40
Petition for appeal	85	40
Assignment of errors	86	41
Order allowing appeal	91	44
Praecipe for transcript of record	93	45
Citation and service [omitted in printing]	94	45
Clerk's certificate [omitted in printing]	96	46
Statement of points to be relied upon and designation to print [illegible]	96	46



[Caption omitted.]

3 In United States District Court for the Southern District of Illinois, Southern Division.

Minute entry

Thursday, January 23, 1930

Court met pursuant to adjournment. Present, the Honorable Louis FitzHenry, judge.

The grand jurors come into open court and present indictment against the following-named person, to wit:

THE UNITED STATES vs. HARRY MURDOCK	No. 1680. Indictment. Vio. section 1111 (a) of rev. act of 1926 and sec. 146 (a) of rev. act of 1926.

(Indorsed:) A true bill, Hinman F. Strother, foreman.

4 In United States District Court for the Southern District of Illinois, Southern Division

UNITED STATES OF AMERICA, PLAINTIFF vs. HARRY MURDOCK, DEFENDANT	Docket No. 1680.

Bill of indictment filed Jan. 23, 1930

SOUTHERN DISTRICT OF ILLINOIS,
Southern Division, ss:

The grand jurors of the United States of America, impaneled, sworn, and charged in the District Court of the United States of America, within and for the said Southern Division of the Southern District aforesaid, at the term aforesaid, of the [illegible] in the year of our Lord nineteen hundred thirty, and [illegible] said Southern Division of the Southern District aforesaid, upon their oath present that Harry Murdock, late of the city of Nameoki, county of Madison, State of Illinois, heretofore [illegible] the defendant, whose true full name is unknown to the grand jurors except as aforesaid, throughout the calendar year 1926 was a citizen of the United States, who was in the real estate and [illegible] business, and whose residence and principal place of [illegible] in the city of Nameoki, county of Madison, [illegible] within the eighth internal revenue collection district [illegible] within said division of said judicial district [illegible] the jurisdiction of this honorable court, [illegible] 1926, said defendant made and filed [illegible] for the calendar year 1926, with the collector of internal revenue

the [illegible] eighth internal revenue collection district of Illinois, which said return was signed and sworn to by the said defendant, and in Schedule A (income from business or profession), of said return, in [illegible] business or profession, the sum of, to wit, twenty-four thousand ninety-one dollars and eighty-two cents ($24,091.82) and showing [illegible] business deductions in said Schedule A of said return, the sum of, to wit, fifteen thousand eight hundred sixty-two dollars and forty cents ($15,862.40), and showing the net income from business or profession to be the sum of, to wit, eight thousand two hundred twenty-nine dollars and forty-two cents ($8,229.42), which said sum of, to wit, eight thousand two hundred twenty-nine dollars and forty-two cents ($8,229.42), was shown by said defendant on the face of [illegible] return for the said calendar year 1927, under the caption "Income" and under the specific item "Income from business or profession", that the said defendant, in so filing his said return for the calendar year 1927, as aforesaid, concealed his [illegible] receipts from business or profession for said calendar year 1927 by the sum of, to wit, twelve thousand dollars ($12,000.00), alleged by the defendant to have been moneys paid out by said defendant during said calendar year 1927 to a person [illegible] unknown to said grand jurors; that afterwards, on, to wit, December 20, 1928, in pursuance of a written designation of Robert H. Lucas, Commissioner of Internal Revenue for the United States of America, giving his authority so to do, John R. Kirk, United States internal revenue agent in charge at Springfield, Illinois, issued a written summons to said defendant, Harry Murdock, and said written summons was regularly served personally on said defendant on, to wit, December 27, 1928, requiring him, the said defendant, to appear before the said United States internal revenue agent in charge at his office in room 305½ East Monroe Street at Springfield, aforesaid, on December 30, 1928, to give testimony and to produce books, for and to said commissioner, concerning said [illegible] moneys in the sum of, to wit, twelve thousand dollars ($12,000.00), by said defendant, and concerning the [illegible] and liabilities of the recipient or [illegible] of the computation, [illegible] imposed upon and due to the United States of America by an act of Congress entitled "An act to reduce and [illegible] which said act, and on, to wit, December 30, 1928, the said Harry Murdock did appear [illegible] the said [illegible] and [illegible] and [illegible] and

[illegible]

[illegible]

[illegible]

$12,000.00, alleged by the defendant to have been moneys paid out by said defendant during said calendar year 1928 to a person or persons unknown to said grand jurors; that afterwards, on, to wit, December 23, 1929, in pursuance of a written designation of Robert H. Lucas, Commissioner of Internal Revenue for the United States of America, giving him authority so to do, John R. Kirk, United States internal revenue agent in charge at Springfield, Illinois, issued a written summons to said defendant, Harry Murdock, and said written summons was regularly served personally on said defendant on, to wit, December 27, 1929, requiring him, the said defendant, to appear before the said United States internal revenue agent in charge at his office in room 308½ East Monroe Street, at Springfield aforesaid, on December 30, 1929, to give testimony and supply information for and to said commissioner concerning said payment of said moneys in the sum of, to wit, $12,000.00, by said defendant, and concerning the name and address or names and addresses of the recipient or recipients of such payment, for the purpose of the computation, assessment, and collection of income taxes imposed upon and due to the United States from such other person or persons by an act of Congress, approved May 29, 1928, entitled "An act to reduce and equalize taxation, provide revenue, and for other purposes," which said act of Congress is known as the revenue act of 1928; that on, to wit, January 9, 1930, the said defendant, Harry Murdock, did appear before said United States internal revenue agent in charge at the city of Edwardsville in the State of Illinois, in pursuance of said summons, but then and there refused to give testimony and supply information; that because he had full knowledge and information concerning said matter of said payment of said sum of, to wit, $12,000.00, said defendant was under a duty to appear before said John R. Kirk and give testimony and supply information concerning same, which said testimony and information is material for the purpose of the computation, assessment, and collection of income taxes; and that said defendant, notwithstanding his said duty, and although he then and there was required, under the provisions of said act of Congress, so to comply with said summons and give such testimony and information to said John R. Kirk, unlawfully did willfully fail to give such testimony and supply such information concerning said matter of said payment of said sum of, to wit, $12,000.00, to wit, on said January 9, 1930, in said Southern Division of said Southern District of Illinois, and in said eighth internal revenue collection district of Illinois, or at any other time or place; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

WALTER M. PROVINE,
United States Attorney.

(Indorsed:) A true bill, Hinman F. Strother, foreman.

(File indorsement omitted.)

10 [Omitted.]

(Copy)

11 In United States District Court

[Title omitted.]

Demurrer to indictment

(Filed Feb. 6, 1930)

And now comes Harry Murdock, above-named defendant, in his own proper person, and also by the undersigned attorneys, into court, and, having heard the said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that he, the said Harry Murdock, is not bound by law to answer the same. And, as particular specifications in support but not in limitation of this general demurrer, defendant cites the following:

1. The said indictment, and each count thereof, violates the sixth amendment to the constitution of the United States in that it fails to inform the defendant of the nature and cause of the accusation.

2. The indictment, and each count thereof, fails to inform the defendant of the nature and cause of the accusation in this, that it wholly fails and omits to recite or aver what, if any, information was requested of defendant, and what, if any, questions were propounded to defendant.

3. Inasmuch as each count of the indictment fails and omits to set forth the questions, if any, that were asked of defendant by John R. Kirk, United States internal revenue agent, or the answers, if any, that were given by the defendant, the allegation contained in each count that defendant "unlawfully did willfully fail to give such testimony" is a mere conclusion that this defendant is not, by law, required to answer.

4. The indictment, and each count thereof, is fatally defective because it fails to aver whether the defendant, in failing and refusing to answer questions put to him by John R. Kirk, United
12 States internal revenue agent, stood upon his rights as guaranteed by the fifth amendment to the constitution of the United States and stated that he could not answer such questions because his answers might incriminate him or subject him to criminal prosecution for violation of a penal statute of the United States or of the State of Illinois.

5. The indictment, and each count thereof, is otherwise vague, ambiguous, argumentative, indefinite, and uncertain.

And this the defendant is ready to verify; wherefore, for want of a sufficient indictment in this behalf, the said Harry Murdock prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment specified.

(Signed) Moore & Frech,
(Signed) Kaufe, Barry, & Lautenbach,
Attorneys for Defendant.

[File indorsement omitted.]

13 [Omitted.]

14 In United States District Court

[Title omitted.]

Additional special ground for demurrer.

(Filed Feb. 19, 1930)

Now comes Harry Murdock, the above-named defendant, by Moore & Fitch, and Keefe, Bandy & Listeman, his attorneys, and assigns the following additional ground of demurrer to the indictment in the above-entitled case, and respectfully asks this honorable court to consider this as one of the assignments or special grounds of the demurrer to the indictment, heretofore filed by this defendant:

The indictment is fatally defective and insufficient, because it shows, upon its face, by its averments, that Robert H. Lucas, Commissioner of Internal Revenue for the United States of America, and John R. Kirk, internal revenue agent in charge at Springfield, Illinois, did not petition and cause the United States District
15 Court for the Southern District of Illinois, Southern Division, by appropriate process, to compel the attendance of defendant before the said John R. Kirk, United States internal revenue agent in charge at Springfield, Illinois, for the purpose of supplying information, as required by the provisions of section 1122-A of the revenue act of 1926, which is as follows:

"If any person is summoned under this Act to appear, to testify, or to produce books, papers, or other data, the District Court of the United States for the District in which such person resides shall have jurisdiction, by appropriate process, to compel such attendance, testimony, or production of books, papers, or other data."

By failing and omitting to aver that the Commissioner of Internal Revenue for the United States of America, and the United States internal revenue agent in charge at Springfield, Illinois, followed the procedure required by the foregoing statute, which is in full force and effect, the indictment shows, upon its face that the representatives of the Commissioner of Internal Revenue have determined the questions of law involved in this case, and have determined for themselves, measured by their own ideas, the fact that defendant has refused to give information which the United States internal revenue agent in charge at Springfield, Illinois, thinks he is entitled to receive.

The procedure which was followed, as shown by the averments in both counts of this indictment, constitutes an erroneous and mistaken conception of the law applicable to this case.

The averments of the indictment, in showing the failure of
16 the Internal Revenue Department to follow the procedure prescribed by law, show that the defendant has been deprived of substantial rights, among them, the right to a judicial determina-

[File indorsement omitted.]

17 [Omitted.]

18 In United States District Court

[Title omitted.]

Defendant's motion for bill of particulars

(Filed Feb. 25, 1930)

Now comes Harry Murdock, the above-named defendant, by Moore & Fitch, and Keefe, Bandy & Listeman, his attorneys, and respectfully petitions this honorable court to enter an order requiring the prosecution in the above-entitled case, to furnish a written bill of particulars to this defendant, the said bill of particulars to contain the following information:

A transcript, or correct copy of whatever questions were asked of the defendant by Internal Revenue Agent John R. Kirk, or by Hon. Dwight H. Green, special attorney for the Internal Revenue Bureau, and whatever answers, if any, were given, by this defendant, to such questions, when this defendant appeared before said John R. Kirk and Hon. Dwight H. Green, at Edwardsville, Illinois, on the 9th day of January, A. D. 1930.

MOORE & FITCH,
KEEFE, BANDY & LISTEMAN,
Attorneys for defendant.

[File indorsement omitted.]

19 [Omitted.]

20 In United States District Court

[Title omitted.]

Motion to suppress evidence and to restrain its use at the trial

(Filed May 27, 1930)

Now comes Harry Murdock, the above-named defendant, by Moore & Fitch, and Keefe, Bandy & Listeman, his attorneys, and respectfully asks this honorable court to enter an order restraining and preventing the prosecution from using, at the trial of the above-

entitled cause, evidence obtained at a hearing held before John R. Kirk, internal revenue agent in charge at Springfield, Illinois, on the 9th day of January, A. D. 1930, in the office of Joseph Hotz, county clerk of Madison County, Illinois, at Edwardsville, Illinois, in the matter of the demand of the Government for this defendant to supply information as to the names of the recipients, and amounts of money paid by this defendant, in the years 1927 and 1928,
21 at which hearing, this defendant appeared, was sworn, placed on the witness stand, and interrogated. Defendant respectfully requests the suppression of the said evidence and that the prosecution be restrained and prevented, by the order of this court, from using such evidence at the trial of the above-entitled cause, for the following reasons:

1. The said evidence was obtained in violation of the defendant's constitutional rights, and in obtaining same constituted an unreasonable search and seizure of books, papers, and private personal information of this defendant.

2. The use of such evidence would constitute a violation of the fifth amendment to the Constitution, in that it would require this defendant to become a witness and to give evidence against himself.

3. This defendant was not required to supply the information requested by Internal Revenue Agent Kirk at said hearing.

4. This defendant was privileged, by the fifth amendment to the Constitution, from answering the questions asked by the said Internal Revenue Agent Kirk and his attorney, Mr. Green, at the said hearing.

5. The matters asked about were irrelevant, immaterial, and of no concern to the Internal Revenue Department of the United States.

6. The information sought at said hearing was not needed by the Internal Revenue Department, because the defendant offered to pay whatever income tax should be paid upon the part of defendant's income involved in said investigation.
22 7. This defendant was not required to supply information, or to answer questions, on account of the fact that the internal revenue agent was not a judicial officer, and the hearing was not held in a judicial forum, where the constitutional rights of the defendant could be passed upon and his privileges and immunities, as guaranteed by the Constitution, be protected.

8. Defendant attaches hereto his affidavit, setting forth in haec verba, a complete transcript of the hearing held in the office of Joseph Hotz, county clerk of Madison County, Illinois, at Edwardsville, on January 9th, A. D., 1930, and including all questions asked of the defendant, and all answers given by him, and the defendant respectfully requests that his attached affidavit may be considered along with this motion, as a part of it, and in support of it.

Moore & Fryer,
Kinney, Darby & Lieberman,
Attorneys for Defendant.

[Title omitted.]

Affidavit in support of motion to suppress

(Filed May 27, 1930)

Harry Murdock, first being duly sworn, makes the following statement:

I live at Namsoki, Illinois. I was subpoenaed to appear before John R. Kirk, internal revenue agent in charge at Springfield, Illinois, in the office of Joseph Hotz, county clerk of Madison County, Illinois, at Edwardsville, Illinois, on January 9th, 1930, and I did appear there at that time. I had been informed that the purpose of my appearance there was to place me under oath and to require me to supply information as to the names of the taxpayers who paid money from me, and the amounts of money paid by me to them, during the years 1927 and 1928, in order for my income for those years to be further examined, and my income tax to be passed upon by the Internal Revenue Department.

24 At that hearing I was asked many questions that I was privileged from answering, and that I refused to answer because my answers to such questions, or to any of them, would have incriminated and degraded me, and would have subjected me to prosecution in criminal cases in both this United States court, and in the Circuit Court of the State of Illinois within the jurisdiction in which I live. I include, herewith, immediately following this part of my affidavit, a correct stenographic transcript of the proceedings before the said John R. Kirk, internal revenue agent in charge at Springfield, Illinois, as held in the office of Joseph Hotz, county clerk of Madison County, Illinois, at Edwardsville, Illinois, on the 9th day of January, A. D. 1930, when I was supposed to be there, and was placed under oath and examined, which transcript sets forth all the questions that were asked of me, and all of the answers that I gave, together with the reasons which I gave for refusing to reply to certain of the questions, and which transcript shows that such questions were not asked of me in any court in which I could properly assert and claim my rights and privileges, and in which such rights and privileges, so guaranteed by the United States Constitution, could be protected. The said proceedings before Internal Revenue Agent Kirk were as follows:

(For transcript of testimony here inserted, see Motion Files.)

25 I further state that the foregoing, which has been [illegible] as a correct transcript of the proceedings [illegible] R. Kirk, internal revenue agent in charge at Springfield, Illinois, on the 9th day of January, A. D. 1930, [illegible] as appeared at said hearing.

I further state that an examination of the foregoing transcript will show that I was within my rights in refusing to answer the questions asked of me, in said hearing, and that the said questions were not asked in any court where my constitutional rights, or any other rights of mine, could be protected.

I further state that I was privileged from answering all the questions which the foregoing transcript shows I refused to answer, because of the fact that answers to these questions would have subjected me to criminal prosecution in the State courts of Illinois of the jurisdiction in which I reside, as well as in this United States District Court.

If my answers to such questions had shown that I was not entitled to deduct the sum of twelve thousand dollars ($12,000.00) from my taxable income for the year 1927, and the same sum of money from my taxable income for the year 1928, I would have been subjected to indictment and prosecution under the fraud sections of the Federal income tax law. When I made my income return *fro* the years 1927 and 1928 to the collector of internal revenue, I honestly believed that I was entitled to deduct from my taxable income the said sum of twelve thousand dollars ($12,000.00) for each of these two years, and I deducted the said sum, and charged it off as expense, because it was money that I had expended, that I had not kept, that was no part of my income, and that I believed should not be considered a part of my taxable income.

I further state that when I appeared before Internal Revenue Agent Kirk, I offered to pay income tax on the said sums of money, as shown by the foregoing transcript of the proceedings had before the said internal revenue agent, and I am still ready and willing to pay income tax upon same, provided that the Internal Revenue Department of the United States shall hold that I am liable for the payment of income tax upon the two sums of twelve thousand dollars ($12,000.00), above mentioned. I did not intend to defraud the United States Government when I deducted the said sums of money from my taxable income for the years 1927 and 1928, and I charged the said sums of money off for the sole reason that they were paid by me to other persons, but I can not divulge the names of the persons to whom the said sums of money were paid, or the purposes for which they were paid, because my answers to said questions, and my revealing of such information, would, as above set forth, subject me to criminal prosecution, and my said answers would incriminate me, and would cause me to give testimony against myself, and would deprive me of the protection accorded citizens of the United States by the fifth amendment to the Constitution of the United States.

I have believed by my reasoning, and believe the fact to be, that the internal revenue laws of 1926, and the internal revenue law of 1928, which makes the income tax laws, which authorized Internal Revenue Agent Kirk to hold the said hearing to which I was subpoenaed, and at which I was required to testify, do not

I further state that the foregoing transcript shows that the questions which were asked of me concerned gambling operations alleged to have been conducted by me, during the years 1931 and 1932, and that, if I had answered the said questions, I would have incriminated and degraded myself in respect to certain of the penal statutes of the State of Illinois, would have subjected myself to criminal prosecution in courts of the State of Illinois, and would have subjected myself to conviction upon evidence which I had been compelled to furnish against my will, in violation of the plain provisions of the fifth amendment to the Constitution of the United States; that my refusal to answer the said questions was made in good faith, and on account of the fact that answers to such questions would have subjected me to criminal prosecution in the State courts of Illinois, and not because of any desire on my part to conceal facts concerning my income from the Internal Revenue Department.

28 I further state that I was not asked any of these questions in a court of law, where the court could hear my claim of privilege from answering, and render a judicial determination of whether or not I was required to answer such questions; that I was not in a forum where my constitutional rights could, in any way, be protected, when I attended the said hearing before Internal Revenue Agent Kirk, and that this is the first opportunity which I have had to appeal to a United States court of competent jurisdiction to pass upon my claim of being privileged from answering the questions set forth in the foregoing transcript, on account of the fact, as then declared, and now again asserted by me, that my answers to such questions would tend to incriminate and degrade me, and would subject me to indictment, prosecution, and conviction in criminal courts of the State of Illinois, and in the United States District Court for the Southern District of Illinois, and would cause evidence to be used against me in such criminal prosecution, which had been wrung from me against my will, in the said hearing before Internal Revenue Agent Kirk, and which evidence would be used against me in such criminal prosecutions in violation of the plain provisions of the Constitution of the United States.

I further state that I have been indicted in the above-entitled cause, under certain sections of the United States Internal Revenue

law of 1926 and the law of 1928, for failing and refusing to supply information to the United States Department of Internal Revenue, as required by the said laws, and by regulations of the said department, and I have also been informed that in order to prove the charges contained in the said indictment, and to bring about my conviction, the United States district attorney, for the Southern District of Illinois, together with his assistants in charge of the prosecution in the above-entitled case against me, intends to introduce as evidence for the Government, at the trial of the above-entitled case, the foregoing transcript of the proceedings held before Internal Revenue Agent Kirk, in the hearing at Edwardsville, Illinois, and intends to prove, at said trial, that the above set forth questions were asked of me by the said Internal Revenue Agent Kirk, and the attorney, Mr. Green, and that I refused to answer the said questions, and, for that reason, failed and refused to supply information, as required by certain sections of the United States internal revenue law of 1926 and 1928.

I, therefore, respectfully appeal to this honorable court to enter an order restraining and enjoining the prosecution, including the United States attorney for the Southern District of Illinois, and his several assistants, from using in evidence in the trial of the foregoing case any facts which were procured by Internal Revenue Agent Kirk, or any other person connected with the United States Internal Revenue Department, at said hearing held by United States Internal Revenue Agent Kirk, at Edwardsville, Illinois, in the office of Joseph Hotz, county clerk of Madison County, Illinois, on the 9th day of January, A. D. 1930, and to suppress all evidence obtained by means of placing me under oath, at said hearing, at said time and place, before Internal Revenue Agent Kirk, in order that such evidence may not be used at the trial of the above-entitled case, and in order that I may thereby be saved and protected from offering evidence against myself, and in order that I may have the protection to which I am entitled, under the fifth amendment to the Constitution of the United States.

HARRY MURDOCK.

[*Duly sworn to by Harry Murdock; jurat omitted in printing.*]
[File indorsement omitted.]

In the United States District Court

[Title omitted.]

Order denying motion for bill of particulars

(May 27, 1930)

And now on this 27th day of May, A. D., 1930, comes the United States the plaintiff in this case by Walter M. Provine, Esq., United States attorney for the Southern District of Illinois and comes also

the defendant Harry Mustick, in his own proper person and by H. J. Bandy, Esq., his attorney, and the said defendant heretofore entered a motion for a bill of particulars herein, which the court having heard and duly considered the same, it is ordered that said motion be, and is hereby denied.

And the said defendant being arraigned on the indictment herein for plea thereto, says that he is not guilty as therein charged.

32 In the United States District Court

[Title omitted.]

Minute entry

(June 10, 1930)

Come now the parties to this cause and by their respective attorneys and the court having heard the arguments of said attorneys on the motion of the defendant herein to suppress the evidence taken before the internal revenue agent, and not being fully advised in the premises, takes the same under advisement.

33 In United States District Court

[Title omitted.]

Order denying motion to suppress

(June 21, 1930)

The court having duly considered the motion to suppress the evidence heretofore filed herein, it is ordered that the said motion be and it is hereby denied. To which ruling of the court the defendant, by H. J. Bandy, Esq., his attorney, then and there duly excepted.

34 [Omitted.]

35 In United States District Court

[Title omitted.]

Bar: Defendant's motion to suppress

(Filed June 21, 1930)

The indictment charges the defendant with having violated section 146 of the revenue act of May 29, 1928 (U. S. C., title 26, § 2146), and also section 1104 of the revenue act of 1926 (U. S. C., title 26, § 1047), in that the defendant wilfully refused to supply

information to a revenue agent concerning certain substantial payments which he made to other persons, in violation of the provisions of the statutes just referred to.

The defendant has heretofore entered his plea of not guilty and moves to suppress certain evidence taken at a hearing duly had before a revenue agent. The evidence is attached to the motion to suppress. An examination of this evidence shows that the hearing was had for the purpose of examining the defendant with reference to certain deductions which he had taken in his income-tax schedule for moneys paid to other persons in the conduct of his business. Sufficient facts are disclosed to tend to show that when the defendant made out his income-tax schedule for the years 1927 and 1928
36 he was engaged in an illegal and unlawful business. When he was asked to whom the money was paid and for what purpose, he refused to answer, claiming that to do so might incriminate him. He thereafter claimed his constitutional rights under the 5th amendment to the Constitution.

Prior to examination, in his presence, his counsel stated that at the time of the execution of the schedule he thought he was entitled to take deductions for the various sums of money involved, but that if he was not, he was willing to have the schedule amended and pay the income tax upon the said sums, and that he refused to answer the interrogatories put to him chiefly upon the probability of his own prosecution for a violation of the criminal laws of Illinois.

The evidence sought to be suppressed clearly establishes that the defendant willfully refused to give the information desired. In other words, the evidence or the information sought to be procured and which, if given, might have incriminated the defendant under the State laws, was not given and is not involved in this prosecution, so far.

In effect the motion is to procure the suppression of evidence for which no immunity under the 5th amendment is claimed; that is, the refusal to give information. It stands admitted in the record, freely, that he did refuse to give evidence. Whether he was justified in refusing to give the evidence can not be adjudicated upon a mere motion of this character. Only the fact of refusal to answer the questions propounded is shown by the transcript
37 attached to the motion. This fact might also be established by the evidence of the witnesses present, but even that is unnecessary as the defendant admits it.

In the light of these views, it is unnecessary to pass upon the many [illegible] questions of law raised with reference to the privileges and immunities of witnesses. We conclude that the motion to suppress must be denied and

It is [illegible] ordered.

[illegible] Judge.

38 In United States District Court

[Title omitted.]

Order granting leave to file special plea

(July 1, 1930)

Comes now the defendant herein in his own proper person and by H. J. Bandy, Esq., his attorney, and on his motion leave is hereby granted said defendant to file a special plea herein. Special plea filed.

39 [Omitted.]

40 In United States District Court

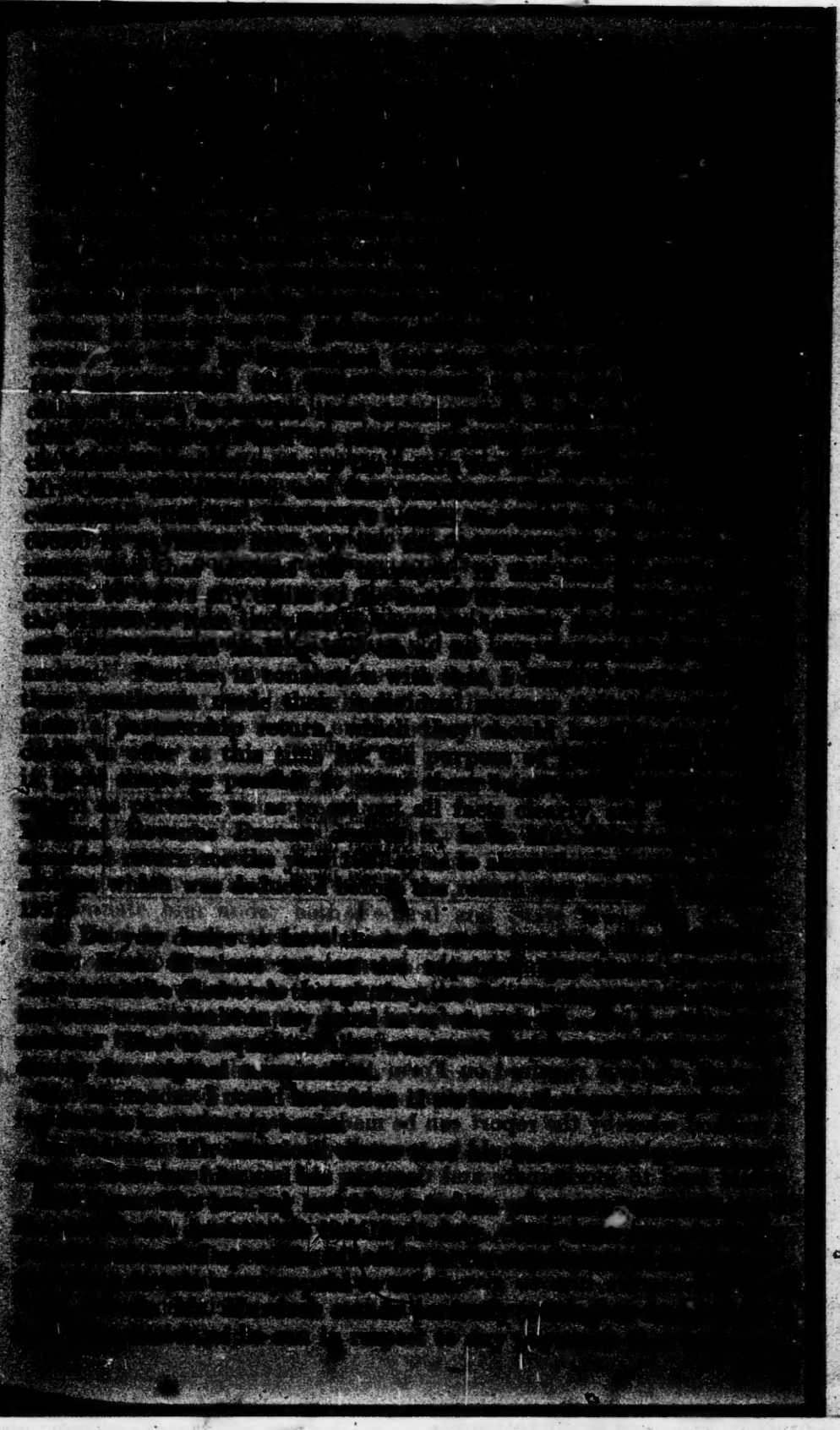
[Title omitted.]

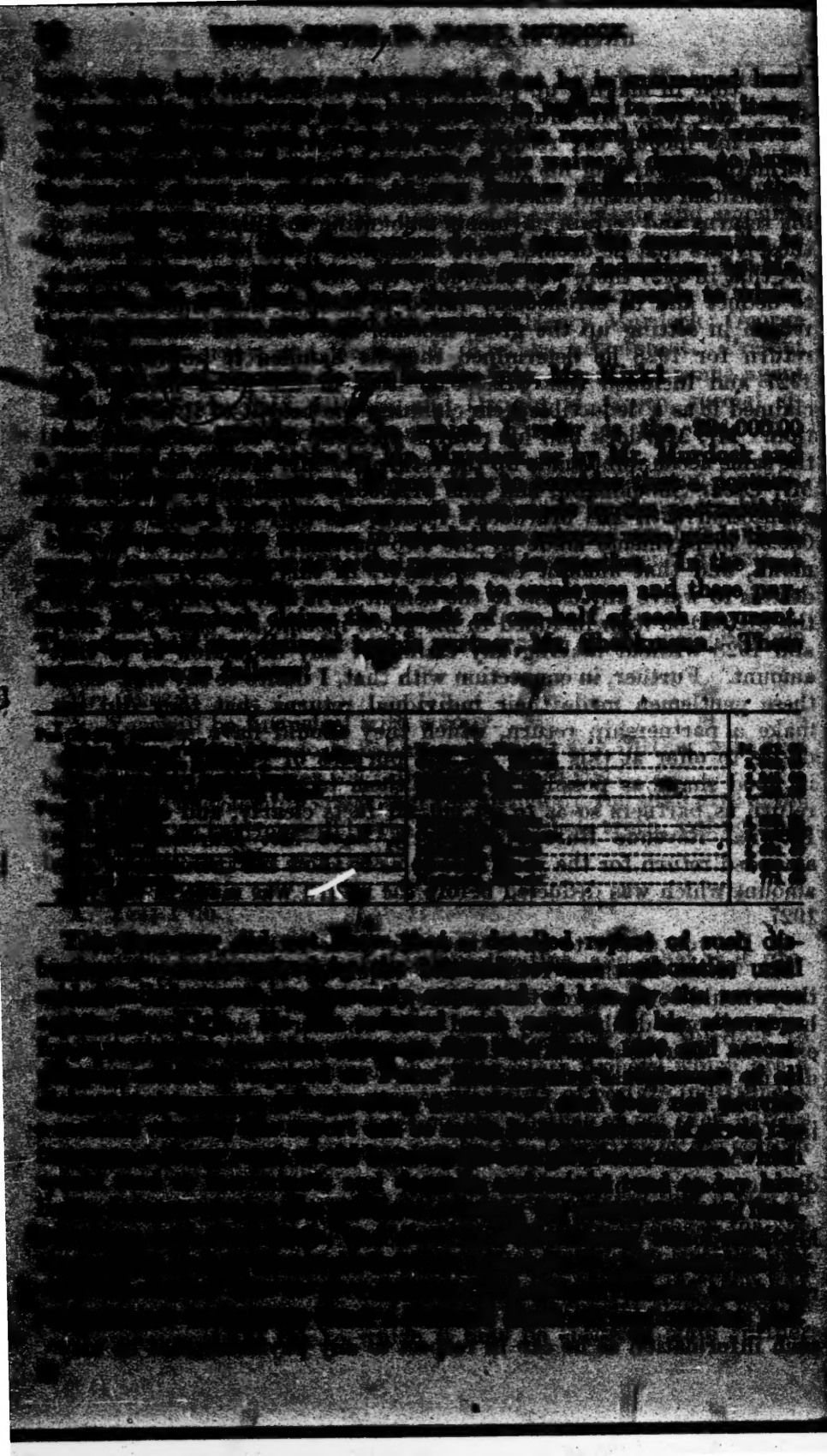
Special plea

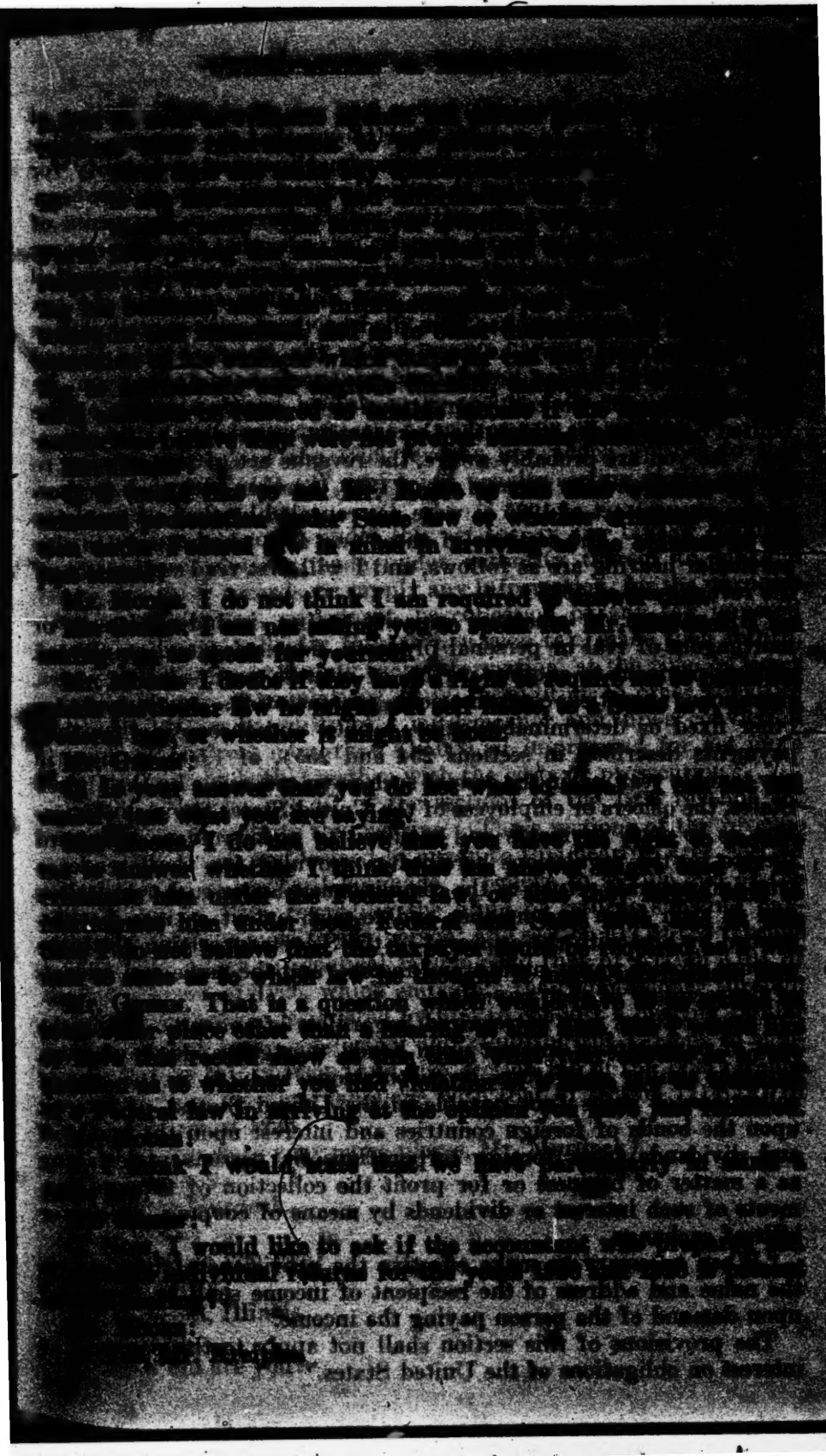
(Filed July 1, 1930)

And now comes the said Harry Murdock, above-named defendant, in his own proper person into court, and having heard the said indictment read, says that the United States ought not further to prosecute this indictment against him, the said Harry Murdock, because he says that if he had answered the questions that were asked of him by John R. Kirk, United States internal revenue agent in charge at Springfield, Illinois, and by Mr. Dwight H. Green, special attorney for the Bureau of Internal Revenue, at the hearing held in Edwardsville, Illinois, on the 9th day of January, A. D. 1930, at which time and place this defendant was placed under oath by the said John R. Kirk, United States internal revenue agent in charge at Springfield, Illinois, and interrogated for the purpose of compelling this defendant to supply information, as alleged in the indictment, and each count thereof, pursuant to an act of Congress, approved February 26th, 1926, and the act of 1928, entitled "An act to reduce and equalize taxation, to provide revenue, and for

41 other purposes," this defendant would have given information which would have incriminated and degraded him and would have compelled him to become a witness against himself in a criminal case, in violation of the fifth amendment to the Constitution of the United States and would have caused him to be prosecuted for crimes in this Federal court for violations of the laws of the United States, as shown by the answers and statements [illegible] by this defendant, as follows:







[illegible] VS. HARRY MIRBOOK

[illegible] before you are asked any questions of [illegible] clear to you that the purpose of this [illegible] personal income tax liability for [illegible] under at this hear- [illegible] with reference to payments of [illegible] in order that the Government [illegible] have correctly reported [illegible] 1927 and 1928 and paid the tax [illegible] if returns have been filed by them persons to prepare [illegible] such a return as provided by the statute of the United [illegible] for such purposes, and before any questions are asked you, we [illegible] to call your attention to certain statutes of the United States under which the Government proceeding at this hearing. As you are probably aware, the revenue act of 1926 applies to the year 1927 and the revenue act of 1928, together with such sections of the revenue act of 1926 as were not repealed by that act apply to the year 1928. The sections of these two acts which apply to this particular hearing are as follows, and I will first read section 256 of the revenue act of 1928:

"All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in sections 164 and 165), of 1,500 or more in any taxable year, except in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and correct return to the commissioner, under such regulations and in such form and manner, and to such extent as may be prescribed by him, with the approval of the Secretary, setting forth the [illegible] and income, and the name and address [illegible] regardless of amounts, (1), in the [illegible] bonds, mortgages, deeds of trust, [illegible] and (2) in the case of [illegible] United States, of interest [illegible] coupons and interest upon the bonds of [illegible] foreign [illegible]

[illegible] shall not apply to the payment of [illegible] obligations of the United States."

47

Mr. Munnoch:
A. 47.
Mr. Gruner:
Q. Has your home always been in Nameoki, Illinois?
Mr. Munnoch:
A. Yes, sir.

48 Q. Mr. Gruner: Where did you live prior to the time you came to Nameoki?
A. Mr. Munnoch: East St. Louis.
Q. Mr. Gruner: How long have you lived in Nameoki?
A. Mr. Munnoch: About eight years.
Q. Mr. Gruner: What has been your business there?
A. Mr. Munnoch: Real estate for the last two years.
Q. Mr. Gruner: Have you just been in real estate business the last two years?
A. Mr. Munnoch: Yes, sir.
Q. Mr. Gruner: You mean by that the years 1928 and 1929?
A. Mr. Munnoch: Well, I started in 1926.
Q. Mr. Gruner: Then you have been in real estate business three years?
A. Mr. Munnoch: About that.
Q. Mr. Gruner: Has that been your only business?
A. Mr. Munnoch: I refuse to answer.
Q. On what ground?
A. On the ground that I might give information that might incriminate and degrade myself.
Q. Do you have in mind the violation of a Federal law or State law when you state your ground is that you might give information to incriminate or degrade yourself?
A. Against a State law.
Q. And not against a Federal law? Is that right, Mr. Munnoch?
A. Not that I know of.

49 Mr. Morgan: I object to that question on the ground that it is immaterial; that the Government has no right to insist upon an answer as to what would be a State or Federal statute in connection with which the witness might tend to incriminate himself.
Mr. Gruner:
Q. Mr. Munnoch, did you operate or have supervision over the operation of any slot machine, coin operated machines, during the years 1927 and 1928?
Mr. Munnoch:
A. Vending machines.
Q. You mean gambling machines?
A. I think that's what they are called.
Q. How many machines did you have in operation during the years 1927 and 1928?
A. I can't tell you off-handed.
Q. Approximately?
A. Around 125, or something like that.

Q. Madison County alone?

A. Yes.

Q. What towns in Madison County?

A. I refuse to answer.

Q. On what ground?

A. That I might incriminate or degrade myself.

Q. And in stating you refuse to answer that you might incriminate or degrade yourself, you have in mind the violation of a State law and not a Federal law?

A. Yes.

Mr. Gamax:

Q. You could not operate those machines without the consent of certain public officials, could you, Mr. Murdock?

Mr. Mumbock:

A. It has been done.

Q. Where was it done without the consent of public officials?

A. It has been done other places.

Q. Is it being done without the consent of public officials?

Mr. Moom: I object to that question as being too broad in its scope, as it is not particular enough in its inquiry.

Mr. Gamax:

All right; strike out that question.

Q. Mr. Murdock, are you at the present time operating any slot machines without the consent of public officials?

Mr. Mumbock:

A. I refuse to answer.

Q. On what ground?

A. That I might give information which might incriminate or degrade myself.

Q. And in stating that you refuse to answer because you might give information which might incriminate or degrade yourself, you have in mind the violation of a State law and not a Federal law?

A. Yes.

Q. In 1927 Mr. Murdock, were you operating slot machines without the consent of public officials?

A. I refuse to answer.

Q. On what ground?

A. Same ground.

Q. Same as the ground.

A. That I might give information which might incriminate

Mr. Mumbock: I am refusing to answer on the ground that I might incriminate or degrade yourself you have in mind the violation of a State law and not a Federal law, Mr. Murdock, is that right?

A. Yes.

Q. Did you in 1938 operate slot machines without the consent o
public officials?

A. I refuse to answer.

Q. On what ground?

A. On any ground.

Q. Refuse on the ground.

A. I refuse to degrade myself.

Q. Do you refuse to answer on the ground that you might
yourself you have in mind the violation of a

Q. The returns for the years 1937 and 1938 were
made out by Mr. Knipke, who is present at this hearing,

Q. You gave him the information from which he made up the

Q. Did Mr. Knipke, to your knowledge, gain any information
making up your returns for the years 1937 and 1938
other than yourself?

A. I don't think he did.

Q. Did Mr. Knipke in making out your
[illegible] in this item of gross income,
your 1937 return, an amount of $24,000.00,
working papers in connection with your
be used in making up your return this
you we possess an explanation? To whom

A. I refuse to answer.

Q. On what ground?

A. On any ground. It might incriminate myself.

Q. Your refusal for your refusal to answer you have in
violation of a State law and not the violation of a Federal

Q. Of the amount of $24,000.00 did you pay $2,500.00 or more
to any person during the year 1937?

A. I refuse to answer on behalf of the payments.

Q. To whom which you say you paid, did you pay
any single person during the year 1937?

Q. On what ground?

A. I might incriminate or degrade myself.

Q. And in stating that your ground for refusal to answer is that you might incriminate or degrade yourself, you have in mind the violation of a State law and not the violation of a Federal law? Is that right?

A. Yes sir.

Mr. Moore: There is an item of $9,250.00 that is included in that deduction as a matter of incidental expenses without classification that was expended by Mr. Murdock himself in connection with the business in which he was engaged.

Mr. Gamm:

Q. Was that expended in connection with your slot machine business or real estate business?

Mr. Murdock:

A. Slot machine business. That was spent by me in going around with my customers trying to find locations for their machines.

Mr. Moore:

Q. What sort of expense was that, Mr. Murdock?

Mr. Murdock:

A. A man running my business can not walk into a soft drink parlor without buying the house a couple of drinks.

Mr. Gamm:

Q. Did you keep a record of these expenditures?

Mr. Murdock:

A. Yes, sir.

Mr. Gamm:

Q. And by buying a drink for the "house" you mean for whoever was in there?

Mr. Murdock:

A. Yes, sir.

Q. That is what you might call promotion of "good will"?

A. Yes, sir.

Q. Mr. Knox: Mr. Murdock, I believe it is your statement that included in the sum of $28,175.14 deducted on your return in the year 1928 is an item of one-half of $12,000.00 of the $24,000.00 annual payment which has been referred to; that is one-half of this amount was deducted on your return and one-half on the return of Mr. Shoolroman. There has been submitted an amount of $7,646.19 as representing your one-half of amounts paid to certain individuals in 1928. Do you mean to state that this amount of $15,292.38 is a portion and all included in the $24,000.00?

Mr. Murdock: I refuse to answer.

Q. Mr. Knox: I will ask you as to the $24,000.00 paid during the year 1928 and the $24,000.00 paid during the year 1927, by the firm of yourself and Mr. Shoolroman, to state the names of the recipients and amounts paid to each.

A. I refuse to answer.

Mr. Green:

Q. On what ground?

Mr. Murdock:

A. I might incriminate or degrade myself.

Mr. Green:

Q. And in stating your ground for refusal to answer that you might incriminate or degrade yourself, you have in mind that violation of a State law and not the violation of a Federal law?

Mr. Missouri:

A. Yes, sir.

Q. Now, Mr. Murdock, there seems to be some discrepancy in the figures which have been mentioned here, and for the purpose of clarifying the record let us again state those figures. Out of the total of $28,175.14 you show and wish to account for a part of that total in this manner, namely: $7,646.19, which represents your half of certain payments made to individuals, whose names and amounts were read into the record here by your attorney, Mr. Missouri. That is right so far, is it?

Mr. Missouri:

A. Yes.

Q. And for the sum of $8,529.00, which represents half of a total of $17,058.00, paid by yourself and your partner, Mr. [illegible], as miscellaneous expenses such as buying of drinks in [illegible] customer's place. That accounts for $16,175.19 out of the figure of $28,175.14. Is that right?

A. That is right.

Q. As to the balance, which is approximately $11,999.95, you wish to get on record record as refusing to state the names of the persons or recipients of that money or amounts paid such persons?

A. Yes, sir.

Q. And you refuse to answer on the ground that such answer may tend to incriminate or degrade you?

A. Yes.

Q. Mr. Murdock, do you know a man by the name of George [illegible]?

A. Yes.

Q. How long have you known him?

A. 15 years.

Q. Do you know what business he is in?

A. No, I do not.

Q. Has your association with him been of a social or business nature?

A. Social.

Q. Have you ever had any business transactions with [illegible]?

A. I refuse to answer.

Q. On what ground?

A. [illegible] ground.

to which you refuse to give or reveal the names of the recipients of amounts paid such recipients, did you pay any of that $12,000.00 to George Little?

A. I refuse to answer.

Q. On what ground?

A. I might give information that might incriminate myself.

Q. In stating your ground for refusal to answer that you might give information that might incriminate yourself, you have in mind the violation of a State law and not the violation of a Federal law?

A. Yes.

Q. Have you any questions which you might wish to ask at this time, Mr. Moore?

Mr. Moore.

A. I have no questions that I desire to ask.

56 And this the said Harry Murdock is ready to verify.

Wherefore, he prays judgment, and that he may be dismissed and discharged by this court from the said premises in the said indictment above specified.

HARRY MURDOCK, *Defendant*,
MOORE & FITCH,
KAYSER, BAIRD & EARLEMAN,
Attorneys for Defendant.

STATE OF ILLINOIS,
County of Madison, ss:

Harry Murdock, the defendant in the above-entitled prosecution, [illegible] that the foregoing plea is true in substance and matter [illegible] and that his refusal to answer the questions set forth in the foregoing transcript was not because of any willful refusal or failure to supply information, as alleged in the indictment, but was on account of the fact that answers to said questions would have

In United States District Court

[Title omitted.]

Order [illegible]

(Oct. 1, 1930)

And now on this 1st day of October, A. D. 1930, comes the United States the plaintiff in this case by Walter M. Provine, Esq., United States attorney for the Southern District of Illinois, and comes the defendant Harry Murdock, in his own proper person, and by H. J. Bandy, Esq., his attorney, and the United States having filed a demurrer to the plea of defendant herein, it is ordered by the court that the setting herein for October 6, 1930, be, and is hereby cancelled. It is further ordered by the court that the demurrer to plea by agreement of counsel is hereby set for hearing on October 17, 1930.

59 In United States District Court

[Title omitted.]

Second special plea

(Filed Oct. 13, 1930)

And now comes the said Harry Murdock, above-named defendant, in his own proper person, into court, and having heard the said indictment read, says that the United States of America ought not further to prosecute this indictment against him, the said Harry Murdock, because he says that if he had answered the questions that were asked of him by John R. Kirk, United States internal revenue agent in charge at Springfield, Illinois, and Mr. Dwight H. Green, special attorney for the United States Bureau of Internal Revenue, at the hearing held in Edwardsville, Illinois, on the ninth day of January, A. D. 1930, at which time and place this defendant was [illegible] under oath by the said John R. Kirk, United States internal

[illegible] February 20th, 1956, [illegible]
[illegible] would have given information [illegible] and degraded him, and have [illegible] himself in a criminal [illegible] to the Constitution of the [illegible] and [illegible] of the Constitution of the [illegible] of the United States, for violations of various criminal laws of the State of Illinois, as shown by the [illegible] of the questions asked of this defendant by said John M. Kirk, [illegible] revenue agent [illegible] this defendant, a copy [illegible] special plea filed in this cause by this defendant, and which transcript included in said first special plea is, by reference, made a part of this second special plea.

And this defendant, Harry Murdock, is ready to verify.

Wherefore, by reason [illegible], and that he may be dismissed and discharged from [illegible] in the said indictment above specified.

Harry Murdock,
Defendant.

Moore & Finch,
H. J. Bandy,
Attorneys for Defendant.

61 State of Illinois,
County of Madison, ss.

Harry Murdock, the defendant in the above entitled prosecution, makes oath and says that the foregoing special plea is true in substance and fact, and that his refusal to answer the questions set forth in the transcript of testimony included in the first special plea filed by this defendant, and, by reference, made a part of this second special plea, was not because of any wilful refusal or failure on the part of this affiant to supply information, as alleged in the indictments, but was on account of the fact that answers to said questions would have incriminated and degraded this affiant, and have subjected him to punishment in the courts of the State of Illinois, for violation of various penal statutes of said State.

Harry Murdock.

Subscribed and sworn to before me this 12th day of October, A. D. 1956.

A. Austin Nevin,
Notary Public.

My notary public commission expires Jan. 5th, 1960.

[File indorsement omitted.]

[File endorsement omitted.]

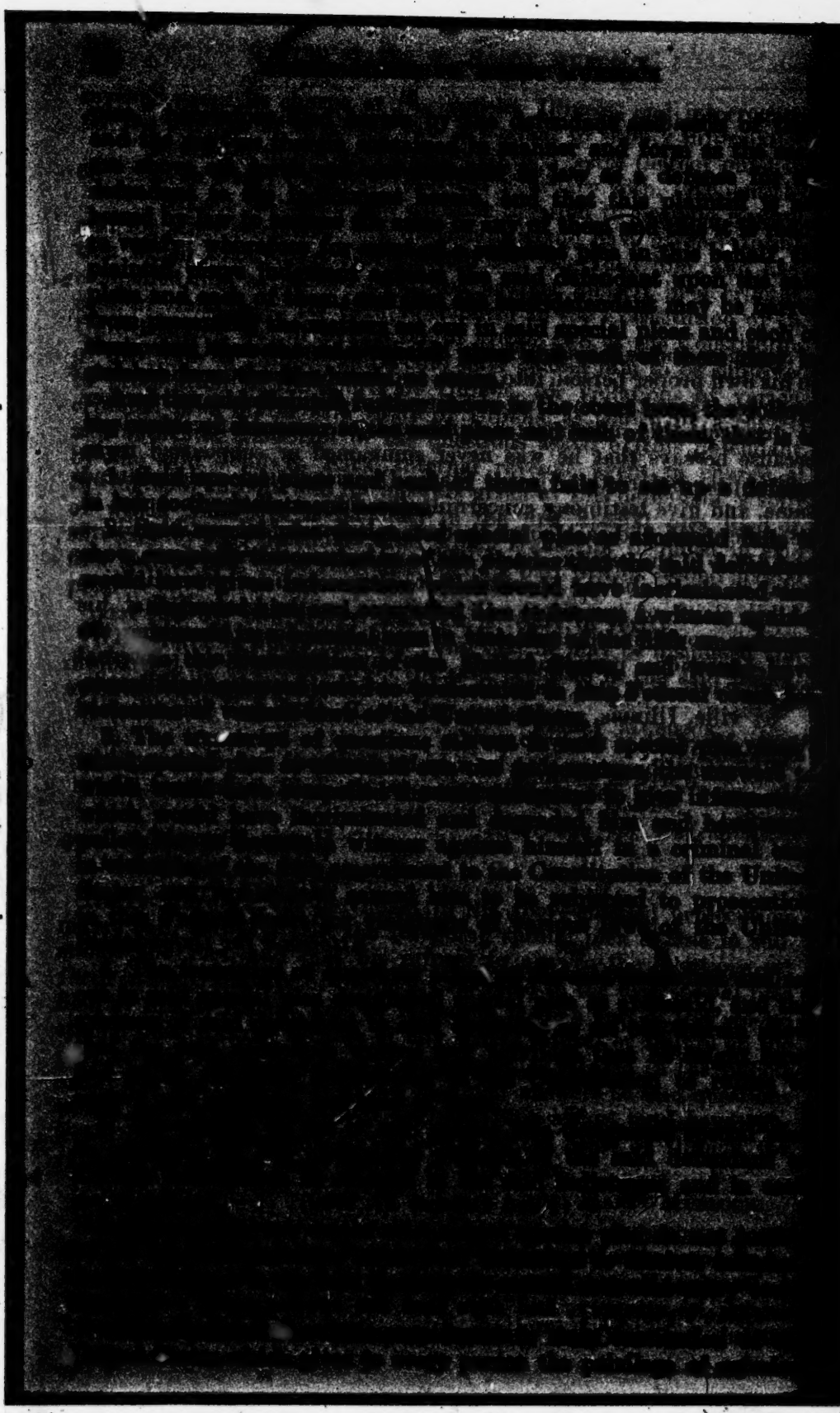
65 [Omitted.]

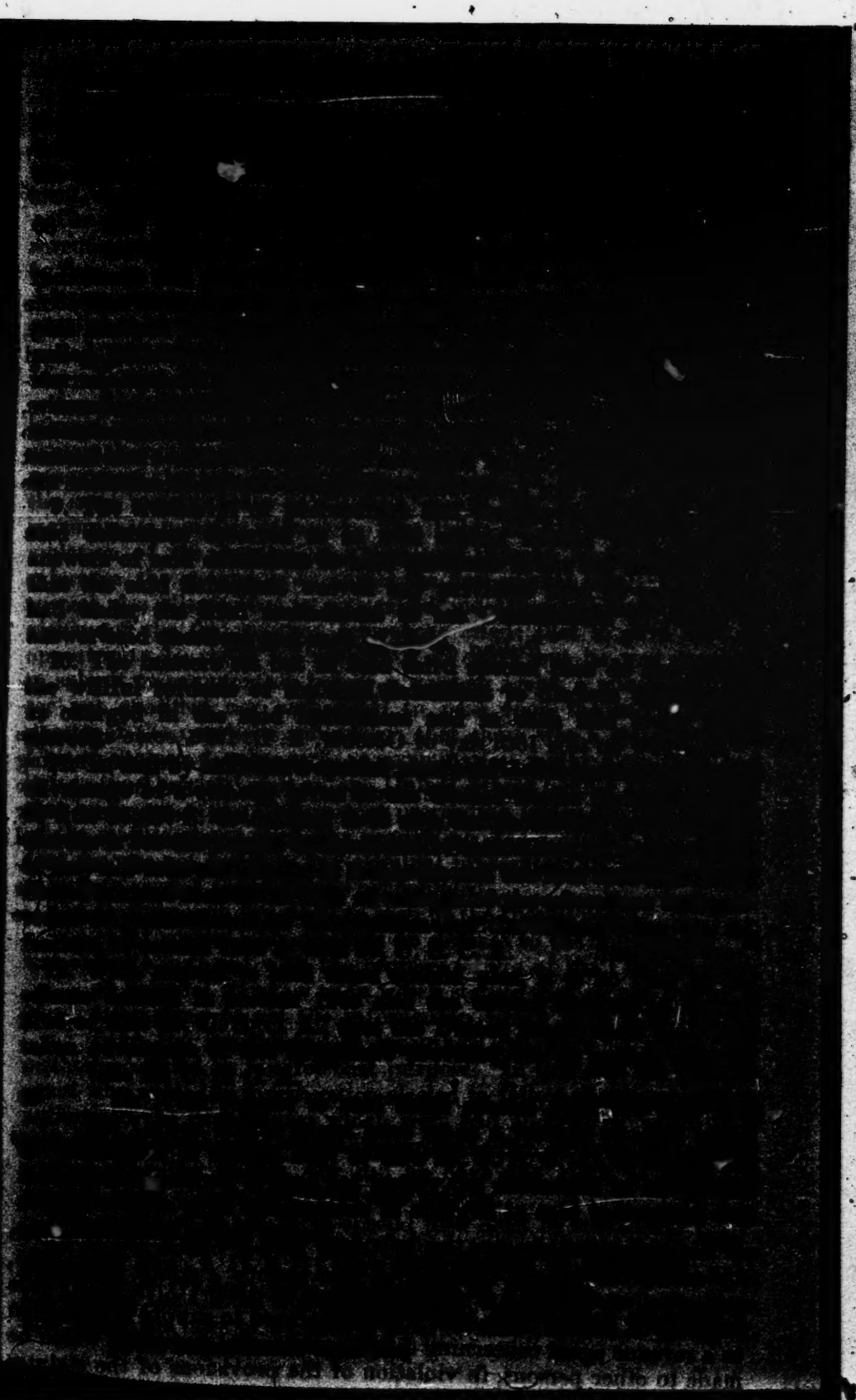
66 In United States District Court

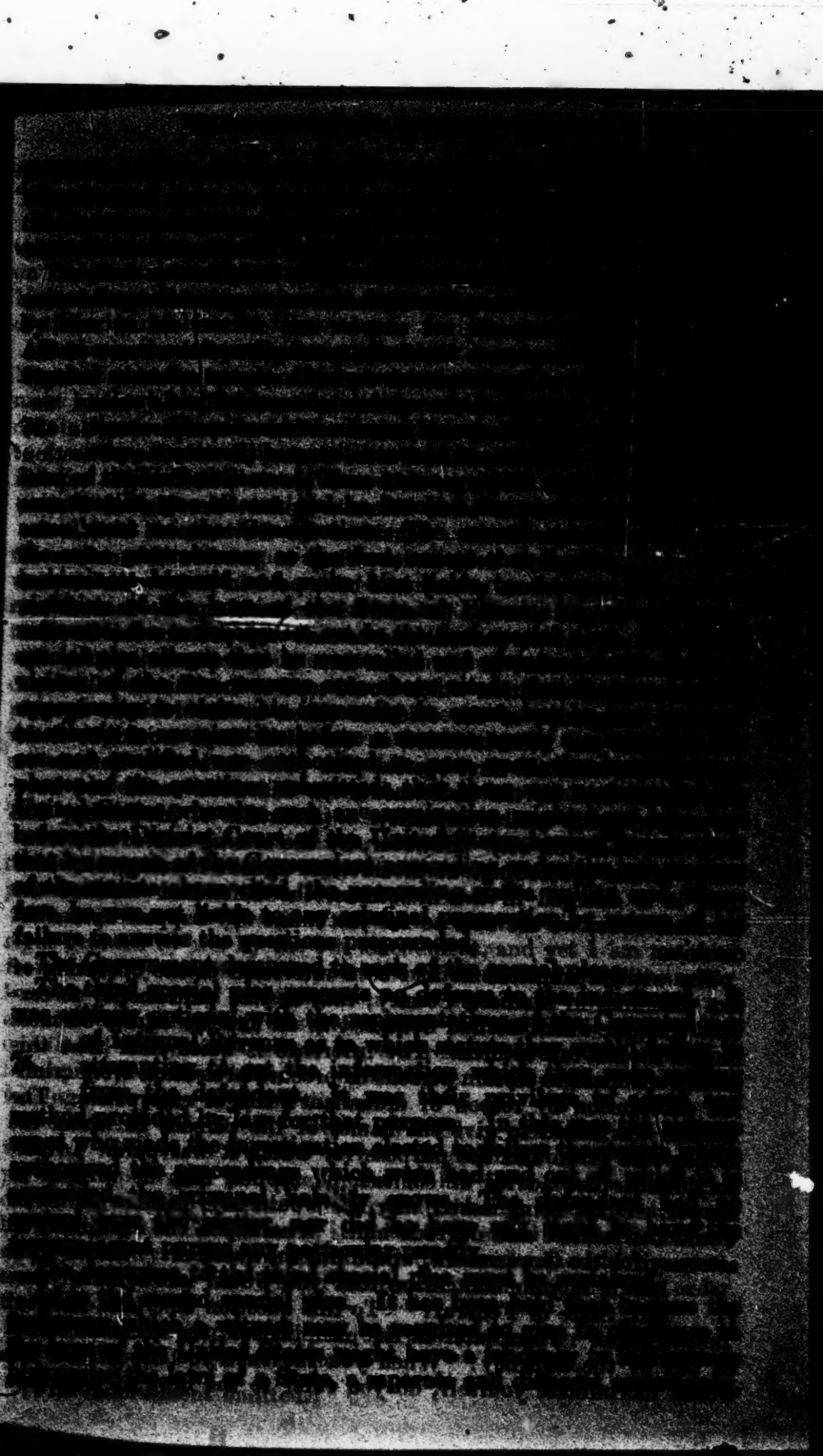
[Title omitted.]

Demurrer to plea

(Filed October 17, 1930)







of the criminal laws of Illinois.

In these circumstances it is argued with a great deal of force that Murdock thereby waived any immunity granted by the 5th amendment to the Federal Constitution by reason of exposing himself to criminal prosecution under the Federal law. The immunity granted to a witness by the 5th amendment can be waived. (Ex parte Irvine, 177 Fed. 883; Thompson v. United States (CCA 7th Cir.), 10 Fed. (2d) 181; Diggs v. United States, 220 Fed. 545, Aff. 242 U. S. 620).

As I said before, the very material question involved in the consideration of the first special plea is whether or not the defendant waived his constitutional right to immunity under the 5th Amendment. A reading of the evidence taken before the referee fairly tends to sustain the conclusion that Murdock was more concerned with protecting other people with whom he had dealings of a criminal nature than he was concerning his own immunity. A clear purpose to shield others is shown. The answer, apparently, was brought out upon defendant's examination by the Government attorney who conducted it. In stating his own reasons, defendant placed no limitations upon the fear of incrimination. When
78 asked why he refused to answer he would say upon the ground that he would incriminate himself; then would follow the technical question which brought the answer which fixed his fear of prosecution to be under the laws of the State.

I am inclined to feel that defendant waived his constitutional right granted to him by the 5th amendment, and yet I am not free from doubt by reason of the particular manner in which the answer limiting his fear of incrimination was procured. The efficacy of the statutes upon which this prosecution is based has been seriously questioned in consideration, for the reason that they contain no immunity provisions broad enough to cover the dangers incident to forcing a witness to a full disclosure.

Considering the fact that I feel warranted in passing the [illegible] which I have on the question as to whether or not the defendant has waived his privilege under the 5th amendment in his favor to the extent of [illegible] the Government's demurrer to the first special plea [illegible] by sustaining the Government's demurrer to the first special plea [illegible] and necessary to prevent an immediate consideration of the [illegible] involved by the United States Supreme Court. The [illegible] therefore will be

Demurrer to first special plea overruled; demurrer to the second and third special pleas sustained.

[Memorandum omitted.]

Judgment, Feb. 3, 1931.

And now on this 3d day of February, A. D. 1931, comes the United States the plaintiff in this case by Walter M. Provine, Esq., United States Attorney for the Southern District of Illinois, and comes also the defendant Harry Murdock, in his own proper person and by H. J. Bandy, Esq., his attorney.

And the said defendant having heretofore entered a plea of not guilty herein, now by leave of court withdraws the same—whereupon the plaintiff stands by its demurrer to defendant's first special plea and the court having heard and duly considered the said matter, here and now renders judgment in favor of the said defendant on his said first special plea, the said defendant to be discharged upon filing recognizance herein in the sum of five thousand dollars.

(Recognizance in amount of $5,000.00. Approved and filed March 16, 1931, omitted in printing.)

(Indorsed:) Filed March 16, 1931. S. T. Burnett, clerk.

[Omitted.]

In United States District Court

[Title omitted.]

Notice of appeal

(Filed Mar. 4, 1931)

To: Harry Murdock, defendant, and Harold J. Bandy, attorney, Granite City, Illinois, and Edmund Burke, attorney, Springfield, Illinois, and each of you:

You will please take notice that the United States of America, plaintiff in the above-entitled cause, feeling aggrieved by the ruling [illegible] in overruling plaintiff's demurrer to [illegible] the court in entering judgment in favor of defendant [illegible] by its demurrer to [illegible] action taken by the United States of America [illegible] a writ of error, [illegible] appeal to the [illegible]

Walter M. Provine,

United States Attorney, in and for the Southern District of Illinois, Attorney for Plaintiff.

[File indorsement omitted.]

84 [Omitted.]

88 In United States District Court

[Title omitted.]

Petition for appeal

(Filed Mar. 4, 1931)

To the honorable Louis Fitzhenry, Judge of said Court:

Now comes your petitioner, United States of America, plaintiff in the above-entitled cause, by Walter M. Provine, United States attorney in and for the Southern District of Illinois, its attorney, and shows to the court that heretofore, on, to wit, February 3, 1931, the District Court of the United States for the Southern District of Illinois, after having theretofore overruled plaintiff's demurrer to the first special plea of the defendant, and also sustained plaintiff's demurrer to the second and third special pleas of the defendant herein, entered judgment in favor of defendant on said first special plea, after the plaintiff had stood by its demurrer to defendant's said special pleas; that said first special plea of the defendant was a plea in bar of this cause of action and of further prosecution of the indictment herein, whereby, and by reason of the entering of said judgment, sustaining the said first special plea in bar, interposed by the said defendant, and your petitioner further shows unto the court that said defendant has not been, by the said indictment or the order of said court, and has not been, in any way put in jeopardy, all of which will more fully appear from the record of this cause in the office of the clerk of this court.

Your petitioner therefore represents that the several pleas by said court, in overruling plaintiff's demurrer to defendant's special pleas, and in entering judgment thereon in favor of defendant on said special plea, and in sustaining plaintiff's demurrer to defendant's first special plea, is error, and is prejudicial to the rights of your petitioner, and that your petitioner intends to prosecute its appeal under law interposed to the damage of your petitioner by reason thereof, as will more fully appear in the written assignment

of errors which is presented and filed herewith, and considered a part hereof.

Wherefore and to the end that said errors may be corrected, your petitioner prays an appeal in said cause from the District Court of the United States for the Southern District of Illinois, Southern Division, to the Supreme Court of the United States, as by law provided; that citation be issued as provided by law, and that a transcript of the record, proceedings and documents, upon which said action was taken by said court, duly authenticated, be sent to the said Supreme Court of the United States, under the rules of said court in such cases made and provided.

Your petitioner further prays that pursuant to statute in such case made and provided, no bond or surety be required of it.

WALTER M. PROVINE,
United States Attorney, for the Southern District of Illinois,
Attorney for United States of America, Plaintiff.

87 [Omitted.]

[File indorsement omitted.]

88 In United States District Court

[Title omitted.]

Assignment of errors

(Filed Mar. 4, 1931)

Now comes United States of America, plaintiff in the above-entitled cause, by Walter M. Provine, United States attorney, in and for the Southern District of Illinois, its attorney, and having heretofore filed its petition for appeal herein, says that in the record and proceedings, and in the action taken by said court, in overruling plaintiff's demurrer to said first special plea, and in entering judgment thereon in favor of defendant on said first special plea, after the plaintiff had stood by its demurrer to defendant's first special plea, there has intervened manifest and prejudicial error, to the prejudice of the plaintiff, United States of America, in the above-entitled cause.

The said errors so intervening are enumerated as follows, to wit:

1. The court erred in overruling plaintiff's demurrer to the first special plea filed by the defendant herein.

2. The court erred in entering judgment in favor of defendant on said first special plea, after the plaintiff had stood by its demurrer to defendant's first special plea.

89 Wherefore, the plaintiff, United States of America, respectfully prays that the action taken by said court, in overruling

plaintiff's demurrer to said first special plea filed by the defendant and the ruling of the court in entering judgment in favor of defendant on said first special plea, after the plaintiff had stood by its demurrer to defendant's first special plea, be set aside, and that the plaintiff's demurrer to defendant's first special plea be sustained, and the judgment heretofore entered by the court in favor of defendant on said first special plea, after the plaintiff had stood by its demurrer to defendant's first special plea, be set aside and held for naught.

WALTER M. PROVINE,
United States Attorney, for the Southern District of Illinois,
Attorney for United States of America, Plaintiff.

[File indorsement omitted.]

90 [Omitted.]

91 In United States District Court

[Title omitted.]

Order allowing Appeal

(Filed Mar. 4, 1931)

Now on this 4th day of March, 1931, there is presented to the court the petition of the plaintiff, United States of America, praying for an appeal herein to the Supreme Court of the United States, and it appearing to the court that there has been filed with said petition for appeal, and assignment of errors, setting forth separately and particularly each error asserted and intended to be urged,

It is therefore ordered by the court that an appeal be, and the same is, hereby allowed said plaintiff, United States of America, as provided by law, to the Supreme Court of the United States, to review the decision, proceedings and the judgment and action taken by the court in this case, wherein the court overruled the plaintiff's demurrer to the first special plea of the defendant, and on February 8, 1931, entered judgment in favor of defendant on said first special plea, after the plaintiff had stood by its demurrer to defendant's first special plea, that citation issue as provided by law; that a full transcript of the proceedings in this case be, by the clerk of this court, presented and filed with the clerk of the Supreme Court of the United States, and that pursuant to statute, in such case made and provided, no supersedeas bond, or cost bond, or surety for the same, need be filed herein by said plaintiff, United States of America.

Dated at Springfield, Illinois, this 4th day of March, 1931.

LOUIS FITZHENRY, *Judge.*

[File indorsement omitted.]

In Circuit Courts Division Court

[Title omitted.]

Praecipe for transcript of record

(Filed Mar. 4, 1931)

To the Clerk of said Court:

Please prepare transcript of record on appeal to the Supreme Court of the United States, in behalf of United States of America same to consist of the following:

1. Placita and captions.
2. Indictment.
3. All demurrers, pleas, motions, judgment of the court, and and all orders of the court in relation thereto.
4. Petition for appeal.
5. Assignment of errors.
6. Order allowing appeal.
7. Citation and service.
8. Praecipe for Transcript of Record.
9. Defendant's bond.
10. Clerk's certificate.

UNITED STATES OF AMERICA,
By WALTER M. PROVIES,
United States Attorney in and for the Southern Dist. of Illinois,
Attorney for Appellant.

Copy of this praecipe for Transcript of Record received this 4th day of March, A. D. 1931.

HARRAD J. BANDY,
EDMUND BURKE,
Attorneys for Defendant Appellee.

[Title of cause omitted.]

[Citation in usual form showing service on Harry Murdock filed Mar. 4, 1931 omitted in printing.]

[Filed Mar. 4, 1931. S. T. Burnett, clerk.]

[Clerk's certificate to foregoing transcript omitted in printing.]

In Supreme Court of the United States

Statement of points relied upon, and designation of entire record for printing

(Filed April 7, 1931)

Pursuant to Rule 13 of this court, appellant specifies the following points upon which it intends to rely in the above-entitled cause:

1. The District Court erred in overruling the Government's demurrer to the appellee's first special plea in bar.

upon the [illegible] by claiming that the payment of the [illegible] answer would not in any way [illegible] laws, or any of them, of the United States, and that the [illegible] would only [illegible] their [illegible] State law.

The appellant deems the above record, as filed, to be necessary for the consideration of the above proposition.

Thomas D. Thacher,
Solicitor General.

Per W. M. K.

Dated August 6, 1931.

[File indorsement omitted.]

(Indorsement on cover:) File No. 36,737. S. Illinois, D. C. U. S. Term No. 515. The United States of America, appellant, vs Henry Murdock. Filed March 24, 1931. File No. 36,737.

JURISDICTIONAL STATEMENT

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 815

UNITED STATES OF AMERICA, APPELLANT

v.

HARRY MURDOCK

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above-entitled cause.

A

STATUTE

The statutory jurisdiction of this Court to review by direct appeal the judgment here complained of is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, sec. 682), otherwise known as the Criminal Appeals Act, and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229,

B

DATE OF JUDGMENT AND APPLICATION FOR APPEAL

The judgment of the District Court was entered February 3, 1931. (R. 78.)[1] The application for appeal was made March 4, 1931, and allowed the same day. (R. 85–86, 91.) The case was docketed in this Court on March 24, 1931.

C

NATURE OF THE CASE

On or about March 15, 1928, and on or about March 15, 1929, the appellee filed his individual Federal income tax returns for the calendar years 1927 and 1928, respectively. (R. 4, 7.) In his 1927 return appellee sought to deduct amounts totalling $12,000, alleged to have been paid out to another person or persons (R. 5, 43), and in his 1928 return he claimed a deduction of $4,000 as salaries which he alleged had been paid out to another person or persons (R. 8, 43).

Under date of December 23, 1929, under the provisions of Sections 1104 and 618 of the Revenue Acts of 1926 and 1928, respectively (c. 27, 44 Stat. 9, 115; c. 852, 45 Stat. 791, 875), the Internal Revenue Agent in Charge at Springfield, Illinois, in pursuance of written authority from the Commis-

[1] All references to the record are to the pages of the printed transcript prepared by the clerk of the District Court and filed with the clerk of this Court. The typed transcript has not been printed.

D

CASES SUPPLEMENTING JURISDICTION

Banning v. Sinclair, 208 U. S. 388, 391-392.

United States v. Barber, 219 U. S. 73, 78.

United States v. Thompson, 251 U. S. 407, 412-413.

United States v. Goldman, 277 U. S. 229, 236-237.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

G. A. YOUNGQUIST,
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JOHN H. MCEVERS,
Special Assistants to the Attorney General.

E. C. CHOATE,
Attorney.

APRIL, 1931.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Provisions of Constitution and of statutes involved	2
Statement	4
Specification of errors to be urged	9
Summary of argument	9
Argument:	
I. The witness was required by statute to answer the questions which were put to him and the special plea was bad because it failed to allege any sufficient excuse for his refusal to answer	10
II. The claim of immunity as made at the hearing may not be enlarged after the hearing is concluded and the witness is under prosecution for having refused to testify	20
III. The conclusion of the District Court that the answers to the questions which the appellee declined to answer would have tended to incriminate him was without foundation	22
Conclusion	24

CITATIONS

Cases:	
Arndstein v. *McCarthy*, 254 U. S. 71	12
Ballman v. *Fagin*, 200 U. S. 186	18
Brown v. *Walker*, 161 U. S. 591	14, 15, 17, 18, 19
Counselman v. *Hitchcock*, 142 U. S. 547	17
Elwell v. *United States*, 275 Fed. 775	17
Grant v. *United States*, 227 U. S. 74	20
Hale v. *Henkel*, 201 U. S. 43	13-14, 15, 16, 17, 18, 19
Interstate Commerce Commission v. *Baird*, 194 U. S. 25	10
Interstate Commerce Commission v. *Brimson*, 154 U. S. 447	10
Jack v. *Kansas*, 199 U. S. 372	15
King of the Two Sicilies v. *Willcox*, 7 State Trials (N. S.) 1050	15-16
Mason v. *United States*, 244 U. S. 362	12, 19, 23
Queen v. *Boyes*, 1 B. & S. 311	15
State v. *Marsh*, 1 Jones (46 N. C.) 526	16
United States v. *Saline Bank*, 1 Pet. 100	18
United States v. *Sullivan*, 274 U. S. 259	10
Zakonaite v. *Commissioner of Immigration*, 273 U. S. 103	18
Wilson, In re, 25 Fed. Cas. No. 14692e	19
Wilson v. *United States*, 221 U. S. 361	19

	Page
Constitution and statutes:	
Fifth Amendment to the Constitution	2
Revenue Act of 1928, c. 27, 44 Stat. 9, 50, 118, 116—	
Sec. 256 (U. S. C. A., Title 26, sec. 1028)	2–3
Sec. 1104 (U. S. C. A., Title 26, sec. 1247)	3–4
Sec. 1114 (a) (U. S. C. A., Title 26, sec. 1265)	4
Revenue Act of 1926, c. 852, 45 Stat. 791, 835, 896, 878—	
Sec. 146 (a)	5
Sec. 148	4
Sec. 1104	4–5
Miscellaneous:	
39 Harv. L. Rev. 697, 698	10
Wigmore on Evidence (2d ed.), Vol. 4, Secs. 2251, 2258	17

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 38

THE UNITED STATES OF AMERICA, APPELLANT

v.

HARRY MURDOCK

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the District Court (R. 34) has not yet been reported.

JURISDICTION

The judgment to be reviewed was entered February 3, 1931. (R. 38.) Appeal to this Court was allowed on March 4, 1931. (R. 41.) The jurisdiction of this Court to review by direct appeal the judgment involved is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, sec. 682) and Section 238 of the Judicial Code as amended by the Act of February 13, 1925.